

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

SAUROPOD STUDIO INC./STUDIO  
SAUROPODE INC.,

Plaintiff,

v.

No.

STORM8, INC.,

Defendant.

**COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

Plaintiff SAUROPOD STUDIO INC./STUDIO SAUROPODE INC. (“Sauropod Studio”), by and through its attorneys, Vedder Price P.C., for its Complaint for Injunctive and Other Relief (the “Complaint”) against Defendant STORM8, INC. (“Defendant”), states as follows:

**INTRODUCTION**

Sauropod Studio is a video game development company located in Montreal, Canada. Sauropod Studio is the creator of the creative strategy game “Castle Story” and is the owner of the CASTLE STORY trademark. Sauropod Studio also owns a trademark registration in Canada for the CASTLE STORY trademark. Defendant is unlawfully using Sauropod Studio’s trademark for its competitive video game for mobile devices called “Castle Story.” Sauropod Studio seeks injunctive and other relief for Defendant’s federal unfair competition pursuant to 15 U.S.C. § 1125(a) (Count I), unfair competition under Illinois common law (Count II), violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS 510/1 *et seq.* (Count III), and

common law trademark infringement (Count IV). If Defendant is allowed to continue to make unauthorized use of Sauropod Studio's mark, Sauropod Studio will suffer irreparable harm, for which monetary damages will not provide an adequate remedy.

### **THE PARTIES**

1. Sauropod Studio is a corporation organized under the laws of Canada with its principal place of business located in Montreal, Canada. Sauropod Studio creates video games for a wide variety of devices, including its flagship strategy game titled "Castle Story."

2. Upon information and belief, Defendant is a corporation organized under the laws of Delaware with its principal place of business at 1000 Bridge Parkway in Redwood City, California 94065. Defendant is a developer and seller of video games for mobile devices running the iOS and Android operating systems. Defendant operates the brand "TeamLava," under which Defendant produced a video game titled "Castle Story."

### **JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction over Counts I and II of the Complaint under 15 U.S.C. § 1121, 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a), because those claims involve questions of federal law. This Court also has jurisdiction over Counts III and IV under 28 U.S.C. §§ 1338(b) and 1367 because those claims are substantially related to the claims in Counts I and II under the U.S. trademark laws. Sauropod Studio seeks injunctive relief and actual damages, including Defendant's profits derived from its unauthorized trademark use and Sauropod Studio's costs and attorneys' fees under 15 U.S.C. § 1117 and 815 ILCS 510/3.

4. This Court has personal jurisdiction over Defendant under the Illinois Long-Arm Statute, 735 ILCS 5/2-209(a)(1), (2), (3) and (10) and (b)(4), because Defendant regularly transacts business within Illinois and has committed tortious acts within Illinois causing injury to Sauropod Studio within the state. Further, this Court's exercise of personal jurisdiction over

Defendant complies with the due process requirements of the United States Constitution and the Illinois Constitution.

5. Venue is proper in the Northern District of Illinois under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to this Complaint occurred in this District.

### **ALLEGATIONS COMMON TO ALL COUNTS**

#### **Sauropod Studio's Game Titled "Castle Story"**

6. Sauropod Studio owns and claims common law rights under the trademark CASTLE STORY for use in connection with its goods, including but not limited to computer games and video games, and its services, including but not limited to providing information in the field of computer games and video games and providing information in the field of computer game and video game design and production (the "CASTLE STORY Mark").

7. Sauropod Studio owns U.S. Trademark Application Serial No. 85/751,986 (the "'986 Application") for the mark CASTLE STORY for use with various goods and services in International Classes 9, 41 and 42. The '986 Application was filed on October 11, 2012. The '986 Application claims priority to Canadian Trademark Registration No. TMA876,344, which was filed on October 9, 2012 and registered on April 24, 2014. A copy of the U.S. Patent and Trademark Office's records for the '986 Application is attached hereto as Exhibit A. A copy of the Canadian Intellectual Property Office records for Registration No. TMA876,344 is attached hereto as Exhibit B.

8. The Sauropod Studio business was founded by Germain Couët and François Alain in 2010 after they studied game design. Sauropod Studio quickly began developing its first game, titled Castle Story (the "Castle Story Game").

9. Sauropod released its first video demonstration of the Castle Story Game on December 24, 2011 on YouTube. By January of 2015, this video was viewed well over one million times. An excerpt from this video showing the use of the mark CASTLE STORY is reproduced below:



Image from video titled “Castle Story - first demonstration”; available at <http://youtu.be/NwZdXRPeYrc>

10. Sauropod Studio released a number of additional videos on YouTube throughout 2012, providing additional information on the Castle Story Game. These videos included the CASTLE STORY Mark; indicated that the Castle Story Game was produced by Sauropod Studio; and provided links to Sauropod Studio’s website. The videos released by Sauropod Studio in 2012 include the following:

<b><u>VIDEO TITLE</u></b>	<b><u>DATE RELEASED</u></b>	<b><u>URL</u></b>
Castle Story Timelapse	February 6, 2012	<a href="http://youtu.be/PPAMXCCEgkA">http://youtu.be/PPAMXCCEgkA</a>
Castle Story : Bricktron Speedpaint	February 19, 2012	<a href="http://youtu.be/FQIbXRzMfYw">http://youtu.be/FQIbXRzMfYw</a>
Castle Story : Dev Diary Number Four	March 9, 2012	<a href="http://youtu.be/WFKBw4UuHkQ">http://youtu.be/WFKBw4UuHkQ</a>

<u>VIDEO TITLE</u>	<u>DATE RELEASED</u>	<u>URL</u>
Castle Story – Trailer	July 27, 2012	<a href="http://youtu.be/BMCWVvuza_s">http://youtu.be/BMCWVvuza_s</a>
Castle Story - Gameplay demonstration #2	August 10, 2012	<a href="http://youtu.be/txgVjOp7i9w">http://youtu.be/txgVjOp7i9w</a>
Castle Story - Credit Island	August 18, 2012	<a href="http://youtu.be/8K0DDysCC4Y">http://youtu.be/8K0DDysCC4Y</a>
Castle Story - Yay! Hugs!	August 25, 2012	<a href="http://youtu.be/qSH_s7Xh5Ok">http://youtu.be/qSH_s7Xh5Ok</a>

11. On September 7, 2012, Sauropod Studio published a video interview conducted by M.Net with François Alain in which they discussed the Castle Story Game at length. The video included the CASTLE STORY Mark and clearly indicated that Sauropod Studio produced the Castle Story Game. An excerpt from this video is reproduced below:



Image from video titled “Sauropod at M.Net - Sept 7, 2012”; available at <http://youtu.be/DA08ZTDos3c>

12. In May of 2012, Sauropod Studio organized a wholly owned subsidiary as a limited liability company in the United States in the name of Sauropod Studio LLC pursuant to the laws of Delaware.

13. On July 27, 2012, Sauropod Studio, through its agent and nominee Sauropod Studio LLC, began soliciting funding to continue development of the Castle Story Game using the website kickstarter.com (the “Kickstarter Campaign”). Through the Kickstarter Campaign, each individual who contributed at least \$25 through kickstarter.com would receive (i) a copy of the Castle Story Game in its current “alpha” form after the Kickstarter Campaign ended; (ii) access to early “beta” versions of the Castle Story Game while development continued; and (iii) a copy of the final version of the Castle Story Game once it was completed. Additional awards were provided to individuals who contributed larger amounts of money, including posters and T-shirts promoting the Castle Story Game.

14. Within five hours of launching the Kickstarter Campaign, Sauropod Studio reached its goal of \$80,000. When the Kickstarter Campaign ended on August 26, 2012, Sauropod Studio had raised \$702,516 in funding from 27,060 individuals.

15. From August 22, 2012 through August 31, 2012, Sauropod Studio solicited funding through the website PayPal.com (the “PayPal Campaign”). Similar to the Kickstarter Campaign, individuals who contributed at least \$25 through the PayPal Campaign would be provided with (i) a copy of the Castle Story Game in its current “alpha” form after the PayPal Campaign ended; (ii) access to early “beta” versions of the Castle Story Game while development continued; and (iii) a copy of the final version of the Castle Story Game once it was completed. Through the PayPal Campaign, Sauropod Studio raised approximately \$50,000.

16. Throughout 2012, Sauropod Studio publicized the Castle Story Game using the CASTLE STORY Mark extensively on its websites located at sauropodstudio.com and castlestory.net. Third parties also publicized the Castle Story Game using the CASTLE STORY Mark referencing Sauropod Studio, including the following:

<u>ARTICLE</u>	<u>DATE PUBLISHED</u>	<u>URL</u>
<i>Castle Story Is Minecraft Meets RTS</i>  Author: Josh Harmon	January 4, 2012	<a href="http://www.gameranx.com/updates/id/4306/article/castle-story-is-minecraft-meets-rts/">http://www.gameranx.com/updates/id/4306/article/castle-story-is-minecraft-meets-rts/</a>
<i>PC Gamers, Remember the Name Castle Story</i>  Author: Luke Plunkett	January 5, 2012	<a href="http://kotaku.com/5873253/pc-gamers-remember-the-name-castle-story">http://kotaku.com/5873253/pc-gamers-remember-the-name-castle-story</a>
<i>Voxels, Strategy &amp; Crafting: Castle Story</i>  Author: Adam Smith	January 5, 2012	<a href="http://www.rockpapershotgun.com/2012/01/05/voxels-strategy-crafting-castle-story/">http://www.rockpapershotgun.com/2012/01/05/voxels-strategy-crafting-castle-story/</a>
<i>Indie Game Takes Social Media by Storm With One YouTube Video</i>  Author: Chelsea Stark	January 6, 2012	<a href="http://mashable.com/2012/01/06/castle-story/">http://mashable.com/2012/01/06/castle-story/</a>
<i>Sauropod Building Castle Story through Kickstarter</i>  Author: Erik Leijon	January 13, 2012	<a href="http://cultmontreal.com/2012/07/sauropod-building-castle-story-through-kickstarter/">http://cultmontreal.com/2012/07/sauropod-building-castle-story-through-kickstarter/</a>
<i>Minecraft-esque RTS "Castle Story" Raises \$130,000 on Kickstarter in Less Than One Day</i>  Author: Max Eddy	July 27, 2012	<a href="http://www.idigitaltimes.com/minecraft-eque-rt-s-castle-story-raises-130000-kickstarter-less-one-day-335912">http://www.idigitaltimes.com/minecraft-eque-rt-s-castle-story-raises-130000-kickstarter-less-one-day-335912</a>
<i>Castle Story Might Make Some Childhood Dreams Come True</i>  Author: Luke Plunkett	July 29, 2012	<a href="http://kotaku.com/5929988/castle-story-might-make-some-childhood-dreams-come-true">http://kotaku.com/5929988/castle-story-might-make-some-childhood-dreams-come-true</a>
<i>Castle Story Looks a Lot Like Minecraft, but It Looks Awesome Anyway</i>  Author: Josh Wirtanen	July 29, 2012	<a href="http://geekparty.com/castle-story-looks-a-lot-like-minecraft-but-it-looks-awesome-anyway/">http://geekparty.com/castle-story-looks-a-lot-like-minecraft-but-it-looks-awesome-anyway/</a>
<i>Castle Story to Kickstart Your Castle Building and Defending</i>  Author: Justin Lacey	August 2, 2012	<a href="http://www.horriblenight.com/33384/castle-story-to-kickstart-your-castle-building-and-defending">http://www.horriblenight.com/33384/castle-story-to-kickstart-your-castle-building-and-defending</a>
<i>Castle Story's success:</i>	August 24, 2012	<a href="http://www.gamezone.com/originals/castle">http://www.gamezone.com/originals/castle</a>

<u>ARTICLE</u>	<u>DATE PUBLISHED</u>	<u>URL</u>
<i>more than \$600K on Kickstarter and counting</i>  Author: Stephanie Carmichael		-story-s-success-more-than-600k-on-kickstarter -and-counting

17. The CASTLE STORY Mark has been continuously used in commerce in connection with computer games, video games, providing information in the field of computer games and video games, and providing information in the field of computer game and video game design and production since at least December 24, 2011.

18. The CASTLE STORY Mark is well known in the Chicagoland area, in Illinois and throughout the United States.

19. Sauropod Studio has spent, and continues to spend, substantial sums of money, time and effort to develop, produce, advertise and promote the Castle Story Game under its CASTLE STORY Mark.

20. As a result of the care and skill exercised by Sauropod Studio, and because of the extensive advertising, promotion, sale and public acceptance of Sauropod Studio's Castle Story Game, Sauropod Studio's CASTLE STORY Mark has acquired a fine and valuable reputation. The public recognizes Sauropod Studio's CASTLE STORY Mark and identifies it with Sauropod Studio's products exclusively.

21. Sauropod Studio's CASTLE STORY Mark has acquired outstanding celebrity and symbolizes the fine reputation and goodwill that Sauropod Studio has created by providing, distributing and selling products and services of high quality by fair and honorable dealing with the industry and public in the distribution and sale thereof.



22. Sauropod Studio has spent, and continues to spend, substantial sums of money, time and effort to develop, advertise and promote the CASTLE STORY Mark and related products and services through, in part, use of the sauropodstudio.com and castlestory.net websites, advertising campaigns and promotional activities on third-party websites. Such efforts have created and reinforced the association of the CASTLE STORY Mark in the minds of the trade professionals and the consuming public with Sauropod Studio's products and services.

23. Through Sauropod Studio's extensive promotion, advertising, marketing and sales of its Castle Story Game under the CASTLE STORY Mark, the CASTLE STORY Mark has become well known to the general public and in the video game industry as a source identifier for Sauropod Studio.

24. Sauropod Studio has also developed substantial goodwill, consumer recognition and value in its distinctive CASTLE STORY Mark, and has acquired a reputation for quality products and services and nationwide public acceptance.

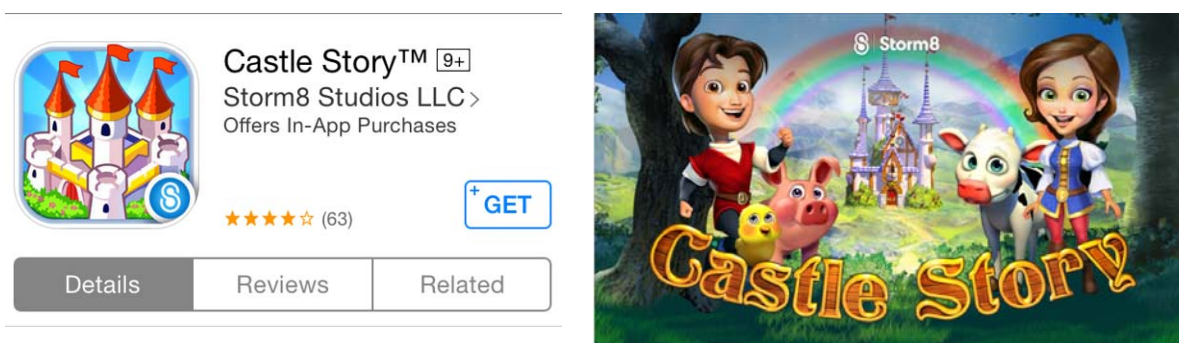
25. The CASTLE STORY Mark identifies the source of the goods and services of Sauropod Studio in the minds of consumers in the marketplace.

26. The Castle Story Game is currently distributed for the Windows, Linux and Mac OS X operating systems via a number of distribution channels, including the Humble Store (available at [https://www.humblebundle.com/store/castlestory\\_store](https://www.humblebundle.com/store/castlestory_store)) and through the Early Access Games program at the Steam store (available at <http://store.steampowered.com/app/227860/>).

**Defendant's Game Infringes Sauropod Studio's CASTLE STORY Mark**

27. Upon information and belief, Defendant began selling a game for mobile devices under the name "Castle Story" on or around September 2012, well after Sauropod Studio's first use of the CASTLE STORY Mark.

28. Below are true and correct images from the Apple App Store of Defendant's game being distributed under the name "Castle Story" for mobile devices running the Apple iOS operating system:



29. Defendant's use of "Castle Story" in connection with its promotion of Defendant's video game products has and will undoubtedly result in confusion among members of the public that such products are actually originating with Sauropod Studio or are related to Sauropod Studio's Castle Story Game.

30. The video games promoted, distributed and sold by Defendant throughout the country using the Apple App Store, the Google Play Store and online are advertised, promoted and marketed in the same channels of commerce as Sauropod Studio's Castle Story Game bearing the CASTLE STORY Mark in the United States, including in this District.

31. Upon information and belief, in light of the extensive publicity received by Sauropod Studio's Castle Story Game, Defendant was aware of Sauropod Studio's CASTLE STORY Mark and Sauropod Studio's hard-earned goodwill at all pertinent times prior to

Defendant's first promotion and use of the CASTLE STORY Mark in connection with the sale and promotion of its video games.

32. Upon information and belief, Defendant has deliberately used the phrase "Castle Story" without Sauropod Studio's consent in connection with Defendant's sale and promotion of video games seeking to trade upon Sauropod Studio's hard-earned goodwill, and Defendant has deliberately attempted to ride Sauropod Studio's coattails to capitalize on the CASTLE STORY Mark.

33. Confusion has resulted and will likely result from Defendant's conduct unless enjoined by this Court.

34. Sauropod Studio has been, and will continue to be, seriously and irreparably injured unless Defendant's conduct is enjoined by this Court.

**COUNT I**  
**FEDERAL UNFAIR COMPETITION PURSUANT TO**  
**SECTION 43(A) OF THE LANHAM ACT (15 U.S.C. § 1125(A))**

35. Sauropod Studio restates and realleges Paragraphs 1 through 34 above as though fully set forth herein.

36. The CASTLE STORY Mark, as used by Sauropod Studio to identify its Castle Story Game and other related products and services, is inherently distinctive and/or has acquired secondary meaning in the marketplace.

37. Defendant's use of the CASTLE STORY Mark in connection with video games and related products and services highly similar to, and directly competitive with, products and services provided by Sauropod Studio under the CASTLE STORY Mark constitutes a false designation of origin, a false and misleading description of fact, and/or a false and misleading representation of fact which is likely to cause confusion and to cause mistake, and to deceive by wrongly suggesting some affiliation, connection or association between Defendant's sales of

competitors' products and services offered by Sauropod Studio under Sauropod Studio's CASTLE STORY Mark. Such use by Defendant has created and is also likely to create confusion, and has caused and is also likely to cause mistake or to deceive as to the origin, sponsorship or approval of Defendant's sale of these products and services by Sauropod Studio, in violation of 15 U.S.C. § 1125.

38. Defendant deliberately and knowingly adopted, used and continues to use the CASTLE STORY Mark in bad faith, with the intent to trade upon the goodwill established by Sauropod Studio, to create confusion in the public mind, and to misappropriate Sauropod Studio's rights in the goodwill it has established in the CASTLE STORY Mark and has damaged Sauropod Studio by such acts.

39. By reason of Defendant's unlawful activities, Sauropod Studio has been and is likely to be damaged in an amount to be proven at trial, and, unless Defendant's activities are restrained, Sauropod Studio will continue to suffer serious and irreparable injury, for which Sauropod Studio has no adequate remedy at law. Sauropod Studio is therefore entitled to a preliminary and permanent injunction against Defendant's further unfair competition in violation of the Lanham Act.

**COUNT II**  
**UNFAIR COMPETITION UNDER ILLINOIS COMMON LAW**

40. Sauropod Studio restates and realleges Paragraphs 1 through 39 above as though fully set forth herein.

41. By promoting similar video games and related products and services using Sauropod Studio's CASTLE STORY Mark, Defendant is using and plans to use marks that are associated or affiliated with or sponsored by Sauropod Studio, thus creating a likelihood of

confusion between the products sold by Defendant and the products of Sauropod Studio. Defendant is thereby engaging in unfair competition with Sauropod Studio.

42. The acts of Defendant complained of herein constitute inequitable pirating of the fruits of Sauropod Studio's labor and are acts of unfair competition in violation of Illinois common law.

43. Defendant's actions are deliberate, willful and in complete disregard for Sauropod Studio's rights, of which Defendant has actual and constructive knowledge.

**COUNT III**  
**VIOLATION OF ILLINOIS UNIFORM**  
**DECEPTIVE TRADE PRACTICES ACT (815 ILCS 510/1 ET SEQ.)**

44. Sauropod Studio restates and realleges Paragraphs 1 through 43 above as though fully set forth herein.

45. By promoting similar video games and related products and services using Sauropod Studio's CASTLE STORY Mark, Defendant has violated the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS §§ 510/1 *et seq.*

46. Defendant's wrongful actions have caused and are likely to cause and, if not enjoined, will cause, deception, confusion in the marketplace and irreparable harm to Sauropod Studio and Sauropod Studio's goodwill and exclusive trademark ownership rights, for which Sauropod Studio has no adequate remedy at law.

47. Defendant's actions are deliberate, willful and in complete disregard for Sauropod Studio's rights, of which Defendant has actual and constructive knowledge.

**COUNT IV**  
**COMMON LAW TRADEMARK INFRINGEMENT**

48. Sauropod Studio restates and realleges Paragraphs 1 through 47 above as though fully set forth herein.

49. Sauropod Studio has common law rights in the CASTLE STORY Mark based on its continuous use of the CASTLE STORY Mark in Illinois and throughout the United States in connection with video games and related products and services.

50. Defendant's unauthorized use of the CASTLE STORY Mark to promote, advertise, market and/or sell its goods has caused and is likely to cause confusion, mistake and deception of the public as to the identity and origin of Defendant's goods, or as to a connection or affiliation with Sauropod Studio, or permission from Sauropod Studio, that does not exist, causing irreparable harm to Sauropod Studio for which there is no adequate remedy at law. Defendant's conduct thus constitutes common law trademark infringement.

51. Despite its actual and constructive knowledge of Sauropod Studio's ownership and prior use of the CASTLE STORY Mark, Defendant has continued to use the CASTLE STORY Mark without Sauropod Studio's authorization or consent. Defendant's actions are deliberate and willful and have been done with the intention of trading upon the valuable goodwill built up by Sauropod Studio in its CASTLE STORY Mark.

52. Defendant's wrongful actions have caused and are likely to cause and, if not enjoined, will cause deception, confusion in the marketplace and irreparable harm to Sauropod Studio and Sauropod Studio's goodwill and exclusive trademark ownership rights, for which Sauropod Studio has no adequate remedy at law.

53. Defendant's actions are deliberate, willful and in complete disregard for Sauropod Studio's rights, of which Defendant has actual and constructive knowledge.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff SAUROPOD STUDIO INC./STUDIO SAUROPODE INC. requests that this Court enter judgment that Defendant STORM8, INC.

A. infringed Sauropod Studio's rights in the CASTLE STORY Mark and competed unfairly with Sauropod Studio by using the CASTLE STORY Mark to promote and sell similar video games;

B. unfairly competed with Sauropod Studio and has violated the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS 510/1 *et seq.*;

C. be, together with its officers, agents, servants, employees, attorneys, importers, suppliers and all persons in active concert and participation with it who receive notice, preliminarily and permanently enjoined from

1. using the CASTLE STORY Mark in connection with the advertising, marketing, promotion and/or sale of any products that are not Sauropod Studio's products;

2. unfairly competing with Sauropod Studio; and

3. causing a likelihood of confusion or misunderstanding as to source, sponsorship, approval or certification of its products or as to any affiliation, connection or association of it with or approval of it by Sauropod Studio, or engaging in any other conduct that similarly creates a likelihood of confusion or misunderstanding or false representation with respect to Sauropod Studio; and

D. be directed to deliver up to this Court for destruction, pursuant to 15 U.S.C. § 1118, any tags, labels or other materials in its possession using the CASTLE STORY Mark and refund any monies paid for products wrongfully sold under the CASTLE STORY Mark to its customers;

E. account for and pay to Sauropod Studio all profits received from the sale of products under the CASTLE STORY Mark;

F. pay to Sauropod Studio. its actual damages on account of Defendant's infringement, unfair competition and false representation, including, but not limited to, the reasonable value of the use of the CASTLE STORY Mark to Defendant and that, in view of the flagrant and deliberate character of such infringement and unfair competition, such damages be trebled;

G. award Sauropod Studio's reasonable attorneys' fees and costs pursuant to 15 U.S.C. § 1117(a) and 815 ILCS 510/1 *et seq.*; and

H. award for such other and further relief in favor of SAUROPOD STUDIO INC./STUDIO SAUROPODE INC. as this Court deems proper and just.

**DEMAND FOR JURY TRIAL**

Sauropod Studio demands trial by jury.



Respectfully submitted,

SAUROPOD STUDIO INC./STUDIO  
SAUROPODE INC.

By:                     /s/ Robert S. Rigg                      
One of Its Attorneys

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Dated: April 29, 2015